

Application No.: 10/061,343
Atty. Docket No.: 53394.000605

Reply Under 37 C.F.R. § 1.116
Amendment After Final Action

Remarks

A. Brief Status of Pending Claims

At the time of the Office action, claims 1-11, 19-30, and 38-46 were pending in the application. Claims 1, 19, 20, 41 and 42-46 were rejected in the Office action under 35 U.S.C. § 102. Claims 2-11, 21-30 and 38-40 were rejected in the Office action under 35 U.S.C. § 103.

Claims 1, 19, 20, 41, and 42 are currently amended. With the entry of this amendment, claims 1-11, 19-30, and 38-46 are now pending in the application.

B. Telephone Interview of February 16, 2005

On February 16, 2005, the Examiner and Applicant's representative discussed possible amendments to the claims that would place the claims in allowable form. A tentative agreement was reached subject to review by the Primary Examiner. Details of the agreed upon amendments are discussed below with respect to the specific claims.

B. Rejection of Claims 1, 19, 20, and 41 under 35 U.S.C. § 102(e)

Claims 1, 19, 20, and 41 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 5,851,205 to Hisada, *et al.* ("Hisada"). Office Action, p. 2. In a prior amendment, filed August 19, 2004, claims 1, 19, 20, and 41 had been amended to recite the limitation of "the fastening area having a second edge, wherein the second edge is substantially parallel to the first edge" in order to overcome a previous rejection based on Hisada. In the Office action and during the interview, the Examiner noted that if the fastening area of Hisada

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were to be divided into two portions then a top portion of a first edge would be parallel with a bottom portion of a second edge. Accordingly, claims 1, 19, 20, and 41 have been amended to recite the additional limitation of "wherein the second edge is substantially parallel to the first edge *along the entire length of the second edge.*" The Examiner agreed that this additional limitation would distinguish claims 1, 19, 20, and 41 over Hisada. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

C. Rejection of Claims 2-18 and 21-40 under 35 U.S.C. § 103(a)

Claims 2-11, 21-30 and 38-40 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious in view of Hisada in view of U.S. Patent 5,057,097 to Gesp. Office Action, pp. 3-4. Claims 2-11 depend from independent claim 1, and claims 21-30 and 38-40 depend from independent claim 21. Independent claims 1 and 21 have been amended and are now allowable. Therefore, dependent claims 2-11, 21-30 and 38-40 should be patentable for at least the same reasons as those discussed above with respect to claims 1 and 21. See MPEP § 2143.03 (stating that if an independent claim is nonobvious, then any claim depending therefrom is nonobvious).

D. Rejection of Claims 42-46 under 35 U.S.C. § 102(e)

Claims 42-46 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,743,321 to Gursalski *et al.* ("Gursalski"). Office Action, p. 3. Claim 42 is an independent claim and claims 43-46 depend from claim 42. Claim 42 has been amended to more clearly recite a limitation of an embodiment of the invention. Claim 42 now contains the limitation of "*the deadened zone having a first edge extending across at least a portion of the*

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width of the tab, the first edge being non-parallel to the fastener tab proximal end, and the deadened zone having a second edge, wherein the second edge is substantially parallel to the first edge along the entire length of the second edge."

Embodiments of the invention recited in claims 42-46 produce an elastic force that varies across the width of the tab. Specification, p. 3, ll. 17-20. This variable elastic force may result in a more comfortable, better fitting, and easily applied fastener tab. *Id.* at p. 3, ll. 12-14. By making an edge of the deadened zone non-parallel with the proximal edge of the tab, the linear distance from the proximal end to the edge of the deadened zone varies across the width of the tab. When different length portions of an elastic laminate are stretched, a variation in elastic force results. This is more fully explained in the specification, pp. 19-20 and in Fig. 3.

In contrast, the edge of the fastener area shown in Guralski is parallel to the proximal end of the tab. Therefore, the tab of Guralski could not "create differing zones of stretchability" as required by claim 42. In order for Guralski to anticipate claim 42, Guralski must teach every element of claim 42. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Guralski does not disclose or reasonably suggest a deadened zone having each of the limitations recited in claim 42. For example, Guralski does not recite a deadened zone having a first edge that is non-parallel to the proximal end of the tab. Therefore, Shimoe does not anticipate amended claim 42, and Applicant respectfully solicits allowance of this claim. Claims 43-46 depend from amended claim 42 and should be patentable for at least the same reasons as those discussed above with respect to claim 42.

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Conclusion

Applicant believes that all of the rejections and objections in the Office action have been addressed by the amendments and remarks above. If there are any questions concerning this Response, Applicant would welcome a telephone call or interview with the undersigned Applicant's representative.

A Petition for One-Month Extension of Period for Reply accompanies this response. Authorization is hereby granted to charge any required fees to the undersigned's deposit account no. 50-0206.

Respectfully submitted,

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Dated: February 22, 2005 By:



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